

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

SUBIR RAY, M.D., RESPONDENT

FILE No. 02-12-059

SETTLEMENT AGREEMENT

COMES NOW the Iowa Board of Medicine (Board) and Subir Ray, M.D., (Respondent), and on October 25, 2013, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4) enter into this Settlement Agreement to resolve the pending charges in this matter.

STATEMENT OF CHARGES

1. Respondent was issued Iowa medical license no. 39143 on August 19, 2010.
2. Respondent's Iowa medical license is active and will next expire on July 1, 2014.
3. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147, 148 and 272C.
4. Respondent is an Iowa-licensed physician who formerly practiced surgery in Harrisburg, Pennsylvania, and currently practices in Shenandoah, Iowa.

5. **Statement of Charges:** On August 30, 2013, the Board filed a Statement of Charges against Respondent for having disciplinary action taken by the Pennsylvania State Board of Medicine in violation of the laws and rules governing the practice of medicine in Iowa.

6. **Pennsylvania Disciplinary Action:** On or about November 16 2011, Pennsylvania State Board of Medicine (Pennsylvania Board) issued a Final Order in a disciplinary action against Respondent. The Pennsylvania Board concluded that Respondent practiced medicine while his ability to practice was impaired by mental disability and that he engaged in unprofessional conduct when he departed from, or failed to conform to, a quality standard of the profession, including, but not limited to, the following:

- A. Respondent inappropriately used latex gloves while performing surgery on a patient with a history of latex allergy in June 2006.
- B. On August 3, 2007, Pinnacle Health in Harrisburg, Pennsylvania, revoked Respondent's clinical privileges due to concerns that Respondent's clinical judgment and surgical care fell below the accepted standards of medical practice.
- C. On April 28-29, 2010, at the direction of the Pennsylvania Board, Respondent attended a two-day assessment at the Upstate New York

Clinical Competency Center. During the evaluation:

- 1) Respondent was argumentative and very aggressive and demonstrated an inability to communicate with patients, reviewing staff, interviewers and ancillary personnel.
- 2) Respondent refused to take the Surgical Clinical Science Knowledge Test so there is no objective evaluation of Respondent's knowledge base in surgery.
- 3) Respondent performed very poorly in the Ethics and Communication Knowledge Test and the Interpretation of Medical Literature Test.
- 4) During the psychological evaluation, Respondent demonstrated difficulty getting along with others, communicating with others, and functioning as part of a team. The Upstate New York Clinical Competency Center concluded that Respondent met the criteria for Narcissistic Personality Disorder.
- 5) Peer review found that Respondent failed to diagnose and manage complications in a timely manner.

D. The Upstate New York Clinical Competency Center made the following recommendations:

- 1) Respondent should undergo psychological counseling for

Narcissistic Personality Disorder with a licensed professional.

- 2) Respondent should complete at least 40 credits of continuing medical education in ethics, communication skills and surgical knowledge within one year.
- 3) Respondent should be required to recertify in surgery.
- 4) Respondent should have his charts and cases monitored for six months.

7. **Sanctions:** The Pennsylvania Board placed Respondent on a period of indefinite probation, for no less than one year, subject to the following terms and conditions:

- A. **Monitoring:** Respondent was ordered to fully comply and cooperate with the Bureau of Professional and Occupational Affairs, Professional Health Monitoring Program (PHMP) and Disciplinary Monitoring unit in their monitoring of Respondent's impairment.
- B. **Relocation:** If Respondent relocates to another Jurisdiction, he must either enroll in the other jurisdiction's impaired professional program or if the other jurisdiction does not have an impaired professional program, Respondent must notify the licensing board that he is impaired. Respondent failed to enroll in the Iowa Physician Health Program or notify the Board that he is impaired as required by the Pennsylvania Board.

- C. **Counseling:** Respondent was ordered to enter into psychological counseling with a treatment provider approved by the PHMP and fully comply with the recommendations of the treatment provider.
- D. **Support Groups:** Respondent was ordered to participate in support group programs if recommended by the treatment provider and provide written verification of his participation.
- E. **Practice Monitor:** Respondent was ordered to practice under the supervision of a practice monitor approved by the PHMP.
- F. **Drug Testing:** Respondent was ordered to submit to drug testing if recommended by the PHMP-approved provider.
- G. **Evaluation:** Respondent was ordered to submit to mental or physical evaluations, examinations or interviews upon request of the PHMP.

SETTLEMENT AGREEMENT

8. **CITATION AND WARNING:** Respondent is hereby **CITED** for being disciplined by the Pennsylvania Board for practicing medicine while his ability to practice was impaired by mental disability and engaging in unprofessional conduct when he departed from, or failed to conform to, a quality standard of the profession. Respondent is hereby **WARNED** that being disciplined by another state licensing board and/or violating the laws and rules

governing the practice of medicine in the future may result in further disciplinary action, including suspension or revocation of his Iowa medical license.

9. COMPLIANCE WITH THE PENNSYLVANIA ORDER:

Respondent shall fully comply with the terms established by the Pennsylvania Board. Respondent recertify in surgery within one year of the date of this order.

10. CIVIL PENALTY: Respondent shall pay a **\$5,000 civil penalty** within twenty (20) days of this order. The civil penalty shall be paid by delivery of a check or money order, payable to the Treasurer of Iowa, to the executive director of the Board. The civil penalty shall be deposited into the State General Fund.

11. CLINICAL COMPETENCY EVALUATION: Respondent shall complete a comprehensive clinical competency evaluation at the Center for Personalized Education for Physicians (CPEP), in Denver, Colorado, Ph.#303-750-7150, within ninety (90) days of the date of this order. Respondent shall contact Kent M. Nebel, J.D., Legal Director at 515-281-7088 once the evaluation has been scheduled. Respondent shall ensure that a report is sent directly to the Board from the program. Respondent is responsible for all costs associated with the evaluation. Respondent shall fully comply with the recommendations of the program following completion of the evaluation. If Respondent fails to complete the evaluation within ninety (90) days of the date of this Order, the Board will issue a notice to Respondent that his license will be suspended thirty (30) days from the date the notice is served. The suspension shall occur automatically and

without further Board action, unless Respondent files a request for hearing on the notice within ten (10) days of the date the notice is served.

12. PHYSICAL, NEUROPSYCHOLOGICAL, MENTAL HEALTH AND DISRUPTIVE BEHAVIOR EVALUATION: Respondent shall complete a comprehensive clinical competency evaluation at the Professionals Program, Elmhurst Memorial Healthcare, 360 W Butterfield Rd Suite 340, Elmhurst, IL 60126, at 630-758-5110 within ninety (90) days of the date of this order. Respondent shall contact Kent M. Nebel, J.D., Legal Director at 515-281-7088 once the evaluation has been scheduled. Respondent shall ensure that a report is sent directly to the Board from the program. Respondent is responsible for all costs associated with the evaluation. Respondent shall fully comply with the recommendations of the program following completion of the evaluation. If Respondent fails to complete the evaluation within ninety (90) days of the date of this Order, the Board will issue a notice to Respondent that his license will be suspended thirty (30) days from the date the notice is served. The suspension shall occur automatically and without further Board action, unless Respondent files a request for hearing on the notice within ten (10) days of the date the notice is served.

13. PROFESSIONAL ETHICS PROGRAM: Respondent shall successfully complete the Professional/Problem Based Ethics (PROBE) program sponsored by the Center for Personalized Education for Physicians (CPEP), 7351

Lowry Blvd., Suite 100, Denver, CO 80230, Ph. 303-577-3232 within ninety (90) days of the date of this order. Respondent shall ensure that a report is sent directly to the Board from the program. Respondent is responsible for all costs associated with the program. If Respondent fails to complete the program within ninety (90) days of the date of this Order, the Board will issue a notice to Respondent that his license will be suspended thirty (30) days from the date the notice is served. The suspension shall occur automatically and without further Board action, unless Respondent files a request for hearing on the notice within ten (10) days of the date the notice is served.

14. **INDEFINITE PROBATION:** Respondent shall be placed on **indefinite probation** subject to the following terms and conditions:

- A. **Board Monitoring Program:** Within thirty (30) days of the date of this Order, Respondent shall establish a Board monitoring program with Mary Knapp, Compliance Monitor, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-281-5525. Respondent shall fully comply with all requirements of the monitoring program.
- B. **CPEP Recommendations:** Respondent shall fully comply with all recommendations made by CPEP.
- C. **Professionals Program Recommendations:** Respondent shall fully comply with all recommendations made by the Professionals

Program.

- D. **Counseling:** If it is recommended that Respondent participate in counseling following completion of the evaluation required in paragraph 12 above, within 30 days of completion of the evaluation, Respondent shall submit the name and CV of an Iowa-licensed counselor for Board-approval and submit to Board-approved counseling under the following conditions:
- 1) Respondent shall meet with his Board-approved counselor as frequently as recommended by the counselor and approved by the Board.
 - 2) Respondent shall continue counseling until his discharge is approved by the Board. All costs associated with the counseling shall be Respondent's responsibility.
 - 3) The counselor shall agree to submit written quarterly reports to the Board concerning Respondent's progress no later than 1/20, 4/20, 7/20 and 10/20 of each year of Respondent's probation.
 - 4) If Respondent fails to submit the name and CV of an Iowa-licensed counselor for Board-approval or fails to submit to Board-approved counseling, the Board will issue a notice to Respondent that his license will be suspended within thirty

(30) days of the date the notice is served on Respondent. The suspension shall occur automatically and without further Board action, unless Respondent files with the Board a request for hearing on the notice within 10 days of the date the notice is served.

E. Practice Monitoring Plan: Respondent shall fully comply with the Board-approved practice monitoring plan agreed upon by Respondent and the Board.

- 1) Respondent shall submit the name and CV of an Iowa-licensed, board-certified, physician to serve as practice monitor.
- 2) The Board shall provide the practice monitor a copy of this order, the practice monitoring plan, all clinical training program reports and all other relevant Board material in this matter.
- 3) The practice monitor shall provide a written statement indicating that the practice monitor has read and understands all Board material provided by the Board and agrees to serve as the practice monitor under the terms of the practice monitoring plan. The practice monitor shall meet with Respondent regularly, review selected patients records, ensure

that Respondent provides appropriate care and treatment to patients and engage in a quality improvement process.

- 4) The practice monitor shall contact the Board immediately if there is evidence that Respondent has provided substandard care to patients.
- 5) The practice monitor shall agree to submit written quarterly reports to the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of this order.
- 6) The practice monitor may be asked to appear before the Board in-person, or by telephone or video conferencing. Such appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).

F. **Worksite Monitoring Program:** Within thirty (30) days of the date of this Order, Respondent shall establish a worksite monitoring program with the Board.

- 1) Respondent shall submit for Board approval the name of a physician who regularly observes and/or supervises Respondent in the practice of medicine.
- 2) The Board shall provide a copy of all Board orders relating to this matter to the worksite monitor.
- 3) The worksite monitor shall provide a written statement

indicating that they have read and understand this Order and agrees to serve under the terms of this Order.

- 4) The worksite monitor shall agree to inform the Board immediately if there is evidence of professional incompetence or a violation of the terms of this Order.
- 5) The worksite monitor may be asked to appear before the Board in-person, or by telephone or video conferencing. Such appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).
- 6) The worksite monitor shall submit quarterly reports to the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.

6) G. **Quarterly Reports:** Respondent shall file sworn quarterly reports attesting to his compliance with the terms and conditions of this Order not later than 1/10, 4/10, 7/10 and 10/10 of each year of this Order.

H. **Board Appearances:** Respondent agrees to appear before the Board annually or upon request for the duration of the period of probation. Respondent shall be given reasonable notice of the date, time and location for the appearances. Said appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).

I. **Monitoring Fee:** Respondent shall make a payment of \$300 to the Board each quarter for the duration of this Order to cover the Board's monitoring expenses in this matter. The monitoring fee shall be received by the Board with each quarterly report required under this Order. The monitoring fee shall be sent to: Shantel Billington, Compliance Monitor, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medicine.

15. Respondent shall submit a written statement to the Board which demonstrates that Respondent has shared a copy of this order with all medical licensing boards where Respondent holds a license, whether active or not, within thirty (30) days of the date of this order.

16. Respondent shall submit a written statement to the Board which demonstrates that he has shared a copy of this order with each hospital and clinic where Respondent practices medicine within thirty (30) days of the date of this order.

17. Pursuant to 653 IAC 21.6, if applicable, Respondent shall notify all physician assistant supervisees within one workday upon receiving disciplinary action from the Board or any other change in status that affects the physician's eligibility to supervise a physician assistant.

18. Respondent voluntarily submits this Order to the Board for

consideration.

19. Respondent agrees that the State's counsel may present this Order to the Board for consideration.

20. By entering into this Order, Respondent understands that he has the right to legal counsel, voluntarily waives any rights to a contested case hearing on the allegations in the Statement of Charges, and waives any objections to the terms of this Order. This Order constitutes the resolution of a contested case proceeding.

21. In the event Respondent fails to comply with any of the terms of this Order, the Board may initiate action to suspend or revoke Respondent's license or to impose other license discipline as authorized in Iowa Code chapters 148 and 272 and 653 IAC 25.

6) 22. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Iowa.

23. Periods in which Respondent does not practice medicine or fails to comply with the terms established in this Order shall not apply to the duration of this Order unless Respondent obtains prior written approval from the Board.

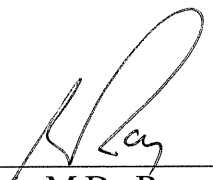
24. Respondent understands that the Board is required by Federal law (45 C.F.R. 60.8) to report this disciplinary action to the National Practitioner Data Bank.

25. The Order becomes a public record available for inspection and

copying upon execution in accordance with the requirements of Iowa Code Chapters 17A, 22 and 272C.

26. This Order is subject to approval of the Board. If the Board fails to approve this Order it shall be of no force or effect to either party.

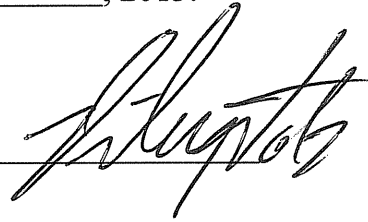
27. The Board's approval of this Order shall constitute a **Final Order** of the Board.

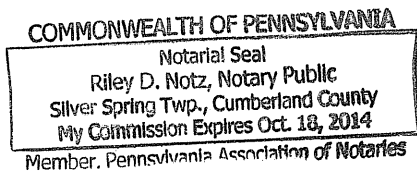


Subir Ray, M.D., Respondent


Subscribed and sworn to before me on Oct 3rd, 2013.

Notary Public, State of PA.





This Order is approved by the Board on October 25, 2013.



Gregory B. Hoversten, D.O., Chairman
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686

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FILE No. 02-12-059

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine (Board) on August 30, 2013, and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2). Respondent was issued Iowa medical license no. 39143 on August 19, 2010. Respondent's Iowa medical license is active and July 1, 2014.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on November 7, 2013, before the Iowa Board of Medicine. The hearing shall begin at 8:30 a.m. and shall be located in the conference room at the Iowa Board of Medicine office at 400 SW 8th Street, Suite C, Des Moines, Iowa.

2. Answer. Within twenty (20) days of the date you are served this Notice of Hearing you are required by 653 Iowa Administrative Code 25.10 to file an Answer. In that Answer, you should also state whether you will require a continuance of the date and time of the hearing.

3. Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on prehearing matters, and be present to assist and advise the board at hearing.

4. Prehearing Conference. A prehearing conference will be held by telephone on September 11, 2013, at 9:00 a.m., before an Administrative Law Judge from the Iowa Department of Inspections and Appeals (ALJ). Please contact Kent M. Nebel, J.D., Legal Director, Iowa Board of Medicine, at 515-281-7088 with the telephone number at which you or your legal counsel can be reached. Board rules on prehearing conferences may be found at 653 Iowa Administrative Code 25.15.

5. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 653 Iowa Administrative Code Chapter 25. At hearing, you will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. If you need to request an alternative time or date for hearing, you must review the requirements in 653 Iowa Administrative Code 25.16. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

6. Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address: Julie Bussanmas, Assistant Attorney General, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319.

7. Communications. You may not contact board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You may contact Kent M. Nebel, J.D., Legal Director, at 515-281-7088 or to Assistant Attorney General Julie Bussanmas at 515-281-5637.

B. LEGAL AUTHORITY AND JURISDICTION

8. Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 147, 148, and 272C.

9. Legal Authority: If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code Chapters 17A, 147, 148, and 272C (2005) and 653 Iowa Administrative Code Chapter 25.25.

10. Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code Section 17A.12(3) and 653 Iowa Administrative Code 25.20.

C. SECTIONS OF STATUTES AND RULES INVOLVED

COUNT I

11. **Discipline by Another Licensing Authority:** Respondent is charged pursuant to Iowa Code section 148.6(2)(d) and 653 IAC 23.1(1) with having a license to practice medicine and surgery or osteopathic medicine and surgery revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the order of disciplinary action is prima facie evidence.

STATEMENT OF THE MATTERS ASSERTED

12. Respondent is an Iowa-licensed physician who formerly practiced surgery in Harrisburg, Pennsylvania, and currently practices in Shenandoah, Iowa.

13. **Pennsylvania Disciplinary Action:** On or about November 16 2011, Pennsylvania State Board of Medicine (Pennsylvania Board) issued a Final Order in a disciplinary action against Respondent. The Pennsylvania Board concluded that Respondent practiced medicine while his ability to practice was impaired by mental disability and that he engaged in unprofessional conduct when he departed from, or failed to conform to, a quality standard of the profession, including, but not limited to, the following:

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C. On April 28-29, 2010, at the direction of the Pennsylvania Board, Respondent attended a two-day assessment at the Upstate New York Clinical Competency Center. During the evaluation:

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D. The Upstate New York Clinical Competency Center made the following recommendations:

- 1) Respondent should undergo psychological counseling for Narcissistic Personality Disorder with a licensed professional.
- 2) Respondent should complete at least 40 credits of continuing medical education in ethics, communication skills and surgical knowledge within one year.
- 3) Respondent should be required to recertify in surgery.
- 4) Respondent should have his charts and cases monitored for six months.

14. **Sanctions:** The Pennsylvania Board placed Respondent on a period of indefinite probation, for no less than one year, subject to the following terms and conditions:

A. **Monitoring:** Respondent was ordered to fully comply and cooperate with the Bureau of Professional and Occupational Affairs, Professional Health Monitoring Program (PHMP) and Disciplinary Monitoring unit in their monitoring of Respondent's impairment. Respondent failed to fully comply and cooperate with the Bureau of Professional and Occupational Affairs, Professional Health Monitoring Program (PHMP) and Disciplinary Monitoring unit in their monitoring of Respondent's impairment as required by the Pennsylvania Board.

- B. **Relocation:** If Respondent relocates to another Jurisdiction, he must either enroll in the other jurisdiction's impaired professional program or if the other jurisdiction does not have an impaired professional program, Respondent must notify the licensing board that he is impaired. Respondent failed to enroll in the Iowa Physician Health Program or notify the Board that he is impaired as required by the Pennsylvania Board.
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- D. **Support Groups:** Respondent was ordered to participate in support group programs if recommended by the treatment provider and provide written verification of his participation. Respondent failed to participate in support group programs and provide written verification of his participation as required by the Pennsylvania Board.
- E. **Practice Monitor:** Respondent was ordered to practice under the supervision of a practice monitor approved by the PHMP. Respondent failed to practice under the supervision of a practice monitor approved by the PHMP as required

by the Pennsylvania Board.

F. **Drug Testing:** Respondent was ordered to submit to drug testing if recommended by the PHMP-approved provider. Respondent failed to submit to drug testing if recommended by the PHMP-approved provider as required by the Pennsylvania Board.

G. **Evaluation:** Respondent was ordered to submit to mental or physical evaluations, examinations or interviews upon request of the PHMP. Respondent failed to submit to mental or physical evaluations, examinations or interviews upon request of the PHMP as required by the Pennsylvania Board.

E. SETTLEMENT

15. Settlement. This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 653 Iowa Administrative Code 12.25. If you are interested in pursuing settlement of this matter, please contact Kent M. Nebel, J.D., Legal Director at 515-281-7088.

F. PROBABLE CAUSE FINDING

16. On August 30, 2013, the Iowa Board of Medicine found probable cause to file this Statement of Charges.

A handwritten signature in black ink, appearing to read "Greg Hoversten". The signature is fluid and cursive, with a large initial "G" and a stylized "H".

Gregory B. Hoversten, D.O., Chairman

Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686